

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 1482 of 1991

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the Judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NR MAKWANA

VERSUS

STATE OF GUJARAT

Appearance:

MR AR THAKKAR for Petitioner
MR PREMAL R JOSHI for Respondents

CORAM : MR JUSTICE S.K. KESHOTE

Date of Decision : 08/12/2000

C.A.V. JUDGMENT

Heard the learned counsel for the parties.

2. The petitioner is praying for issuance of a writ

of mandamus and/or a writ, order or direction in the nature of mandamus directing the respondents to pay to the petitioner all incidental benefits, he having been reinstated in service.

3. The facts of the case are that the petitioner was working as Junior Clerk in the Government Polytechnic College, Ahmedabad. A criminal complaint was filed against the petitioner as well as one Mr. Vyas by the respondents. On investigation, a chargesheet was submitted and the cases were registered as criminal case No.376 of 1978 and criminal case No.623 of 1980. It is the case of the petitioner that against both, the petitioner and Mr. Vyas, almost similar charges were there but separate criminal complaints were filed. Both of them have been convicted. The respondents dismissed both the petitioner and Mr. Vyas from services under the order dated 19-3-1982. Against the order of conviction, the petitioner and Shri Vyas preferred criminal appeals in the City Civil and Sessions Court, Ahmedabad. The appeals were allowed and the conviction of the petitioner and Shri Vyas were set aside vide judgment dated 30-3-1983. After acquittal order of the City Civil & Sessions Court, Ahmedabad on 30-3-1983 in favour of the petitioner and Shri Vyas, the respondents revoked the dismissal order against Shri Vyas, but against the petitioner, the dismissal order was allowed to operate. The Government filed criminal appeal in this court against the order of acquittal of the petitioner. However, in the case of Mr. Vyas, the appeal was not preferred. Be that as it may. The appeal against the petitioner in this court was summarily rejected but still the order of dismissal of the petitioner from services was not revoked. The petitioner filed special civil application No.3518/83 in this Court for quashing and setting aside the order of his dismissal from services passed by the respondents dated 19-3-1982. This special civil application was decided by this Court on 2-2-1984. This Court set aside the order of dismissal of the petitioner from services. It has further been ordered that the petitioner is entitled for reinstatement in service with all incidental benefits. The petitioner was reinstated back in service under the order dated 17th August, 1984 but the period of suspension from 1st November, 1977 to 19th March, 1982 and dismissal period from 20th March, 1982 to 20th January, 1984 were treated as extraordinary leave without pay. The petitioner made grievance that he is entitled for full salary for the period from 1st November, 1977 to 19th March, 1982 and from 20th March, 1982 to 20th January, 1984.

4. Learned counsel for the petitioner contended that denial of full salary to the petitioner for the period of suspension and dismissal is wholly arbitrary and unjustified and contrary to what this Court has decided in special civil application filed by the petitioner. It has next been contended that the case of the petitioner is identical to the case of Mr. Vyas and in the case of Shri Vyas, the respondents have not filed the appeal against the order of his acquittal by the City Civil & Sessions Court, Ahmedabad. After his acquittal by the Sessions Court, Ahmedabad Mr. Vyas was reinstated back in service and he was given all the benefits. So it is a clear case of hostile discrimination in between the similarly situated persons.

5. Shri Premal R. Joshi, learned counsel for the respondents strongly opposed the special civil application.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. It is true that this court while deciding the petition earlier filed by the petitioner set aside the order of dismissal of the petitioner from services and further ordered for his reinstatement with incidental benefits. However, whatever decision as given by this Court has to be read with statutory provisions made by the respondents. The petitioner was placed under suspension as a criminal case was pending against him. He was dismissed from services on his conviction. After his acquittal in the criminal case, the respondents have to consider how this period of suspension and dismissal has to be regularised and reference in this respect may have to Rule 152 of Bombay Civil Services Rules, 1959. In this case the petitioner was placed under suspension as criminal case was pending. The power does lie with the respondents to place the petitioner under suspension where a case against him in respect of criminal offence involving moral turpitude is under investigation. Reference in this respect may have to Rule 5 of Gujarat Civil Services (Discipline and Appeal) Rules, 1971. It is not the case of the petitioner that he was not involved in a criminal offence involving moral turpitude. In the criminal case, the petitioner has been convicted by the trial court. It is true that that conviction was set aside by the appellate court but merely on this ground it is difficult to say what to accept that his suspension was wholly unjustified. The

judgment of the criminal court has not been produced by the petitioner on the record. There may be possibility that the petitioner would have been given the benefit of doubt which also appears from the fact that his case has been differently taken than the case of Shri Vyas who would have been possibly honorably acquitted. Similarly, the dismissal of the petitioner cannot be said to be wholly unjustified after conviction of the petitioner in an offence involving moral turpitude. In case the period of suspension and dismissal is ordered to be regularised in the way that if leaves are due of the petitioner the same are to be adjusted and where leave is not due, it has to be taken to be extraordinary leave without pay then to which order, no exception can be made. The order of this Court no doubt was for giving him the incidental benefits but those are to be given in accordance with law. When Rule 152 of the Bombay Civil Services Rules, 1959, empowers the respondents to pass the order for regularising the suspension and dismissal period of the petitioner, that order has to be passed and it has been passed in accordance with the Rule to which no exception can be made. The contention of the learned counsel for the petitioner is accepted then it has to be read in the judgment as what it is prayed for then certainly those directions may be contrary to statutory provisions. It is no more res integra that the Court will not pass an order which violates statutory provision. After acquittal, how the period of suspension and dismissal of the petitioner has to be dealt with, is concern of the respondents and the respondents have considered this aspect and in the facts of this case, rightly not given full salary to the petitioner for this period. However, the period of suspension and dismissal may be counted for qualifying services of the petitioner for pension and other retirementary benefits.

8. As a result of the aforesaid discussion, this petition fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. No order as to costs.

zgs/-